IN THE HIGH COURT OF JUDICATUTRE AT BOMBAY
O. O. C. J.
WRIT PETITION NO.2131 OF 2004

Chambur Sursangeet Co-operative
Housing Society Ltd. .. Petitioner

Vs.

V.Subramaniam Nee Srinivasan & Ors. Respondents

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Shri K.V.Tembe for the Petitioner.

Ms Mohana Nair for Respondent No.1.

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Coram : R.M.S.Khandeparkar, J

Dated : 16th August, 2004.

ORAL ORDER :

1. Heard the learned Advocates for the parties. Undisputedly, any dispute between the respondent Nos.1 and 2 on one side and the respondent on the other side in relation to the act on the part of the respondent No.3 in entering into an agreement with the Petitioner could not only be entertained but it has to be dealt with in accordance with the provisions of law under Section 91 of the Maharashtra Co-operative Societies Act, 1960. Undisputedly, the Petitioner can claim right of way under the said agreement with the respondent No.3.

2. The grievance of the respondent Nos.1 and 2 relates to the affairs of the society arising out of the agreement entered into between the society and the

petitioner in relation to the property of the society-the respondent No.3. In the circumstances, therefore, when the dispute has been raised by the respondent Nos.1 and 2, who are the members of the respondent No.3- society in relation to the property of and Management of the society-the respondent No.3, the same is required to be dealt with under Section 91 of the said Act. When the dispute is between the respondent No.3 and the respondent Nos.1 and 2 and the subject matter of the dispute is the property of and its affairs by the society- the respondent No.3, and the dispute directly relates to such affairs arisen out of the agreement with the petitioner relating to the property in question, certainly the petitioner is not only a proper party but a necessary party to the proceedings in question. Being so, no fault can be found with the impugned order holding the petitioner to be necessary and proper party to the proceedings.

3. Undoubtedly, joinder of such party would fall under Section 91 of the said Act and not under Section 94(3)(a) as has been held by the lower appellate authority. Provisions of Section 94(3) are on the line of Order I Rule 10 of the Code of Civil Procedure. Undisputedly, the petitioner was joined as the party to the proceedings right from initiation of the proceedings and not pursuant to any application for joinder of the petitioner as the party to the proceedings subsequent to the initiation of the

proceedings, in which case the Court would have jurisdiction to exercise power under Section 94(3) of the said Act. However, mere reference to a wrong provision of law would not render the impugned order to be bad in law. In the facts and circumstances of the case, the presence of the petitioner is necessary for final and effective adjudication of the dispute and to enable the co-operative Court to pass an effective enforceable order on conclusion of the adjudication of the dispute. Considering the nature and subject matter of the dispute involved in the matter, the Co-operative Court has jurisdiction to entertain such dispute as well as to pass effective order relating to the management and affairs of the society and in the process to hear all the persons going to be affected by the decision.

4. For the reasons stated above, no fault can be found from the order allowing the joinder of the petitioner as the party to the proceedings and hence no case is made out for interference in the impugned order and the petition therefore fails and is rejected.